* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 13th September, 2022**

\+ **BAIL APPLN. 2438/2022**

BIMAL KUMAR JAIN ..... Petitioner

Through: Mr. Naveen Malhotra, Mr. Ritnik Malhotra & Mr. Nilansh Malhotra, Advocates

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gurnani, Advocate with Mr. Rajendra Singh, I.O.

**CORAM:**
**HON'BLE MS. JUSTICE ASHA MENON**

**O R D E R**

1. This Bail Application has been filed under Section 439 of the Code of Criminal Procedure, 1973 (for short, "**Cr.P.C.**") read with Section 45 of the Prevention of Money Laundering Act, 2002 (for short, **"PMLA"**) by one of the accused for grant of bail in Complaint Case No.263/2020, ECIR/05/HIU/2018 registered under Sections 3 and 4 of the PMLA.

2. The case alleged against the applicant is that he had operated a firm for money laundering in conspiracy with his brother, namely, Naresh Jain. It is alleged that he along with the co-accused and other employees, had incorporated and operated 450 Indian entities and 104 foreign entities for routing proceeds of crime and also enabling purchase of offices and properties as if with untainted funds. It is alleged that the co-accused

Naresh Jain had placed funds in his companies and layering was done by routing the proceeds of crime into various companies that had dummy shareholders and Directors and were used for opening bank accounts, using identity proofs and documents of real persons, but changing photographs and addresses. Naresh Jain was arrested on 1st September, 2020 under Section 19 of the PMLA. The investigations have traced proceeds of the crime to the tune of Rs.5,65,11,22,269/-, but the extent of money laundering was more than rupees ninety six thousand crores. Further investigations were proceeding, but the first complaint and the supplementary complaints had been filed against the accused persons, including the present applicant.

3. Mr. Naveen Malhotra, learned counsel for the applicant, submitted that the present application has been moved in terms of the orders of the Supreme Court dated 4th January, 2022 passed in SLP (Crl.) No.7942/2021. It was submitted that charge had not been framed and there were about 150 witnesses to be examined and there was no possibility of a quick trial. Therefore, in terms of the orders of the Supreme Court, the present application has been moved, since the Supreme Court clearly did not intend that the applicant should remain in custody. Reliance in this regard has been placed on the judgements in ***Fakhrey Alam v. State of U.P.***, 2021 SCC OnLine SC 532, ***Kamlesh Chaudhary v. State of Rajasthan***, 2021 SCC OnLine SC 270, ***Tunde Gbaja v. Central Bureau of Investigation***, 2007 SCC OnLine Del 450, ***C. Parthasarthy v. Director of Enforcement***, 2022 SCC OnLine TS 1075, ***Akula Ravi Teja v. State of A.P.,*** 2020 SCC OnLine AP 1464, ***P.M.C. Mercantile Private Ltd. v. State***, 2014 SCC OnLine Mad 10242, ***S.M. Furtado v. C.B.I.***, 1996 SCC

OnLine Ker 112.

4. It was submitted that the applicant was entitled to bail as Section 19 of the PMLA was not invoked as he had never been arrested. Without a recording under Section 19 of the PMLA an opinion that the accused was guilty of the offence, the rigors of Section 45 of the PMLA would not apply. Reliance was placed on the judgment of the Supreme Court in ***Satender Kumar Antil v. CBI***, 2022 SCC OnLine SC 825.

5. It was further submitted that even as per Clause (x) of the Prosecution complaint, the allegations have been made only against Naresh Jain, who may be the main accused. However, there was nothing to connect the applicant with any of the companies belonging to Naresh Jain. The companies with which connections were sought to be established with the applicant were those which did not belong to Naresh Jain and in which he was not a director. The applicant's own company was M/s. Jayna Infrastructure Limited, and he was into steel plant and other businesses, such as building projects in Indore in collaboration with other companies. The allegations in the first complaint and the second complaint were the very same allegations and against the very same accused. Therefore, nothing new could be discovered against the applicant. The statements that were made by the applicant to the Directorate officials were completely exculpatory, as he had denied any knowledge of the activities of co-accused Naresh Jain and denied having been involved in any routing of proceeds of crime. Thus, such exculpatory statements could not be used against the applicant. In any case, the applicant would be facing trial and the prosecution would need to prove all the allegations against him. But there was no ground to detain him in judicial custody.

6. It was submitted by the learned counsel for the applicant that the respondent has acted with vengeance inasmuch as five notices were sent to the applicant when Covid-19 pandemic was at its peak and when he sent a medical certificate to the effect that he was suffering from Covid-19, the respondent had prosecuted the lab/dispensary staff Mr. Himanshu, who had prepared the reports. Further, when there was no urgency to do so, the respondent had filed complaints that were incomplete and sought non-bailable warrants against the applicant and got him arrested and without adherence to due process, police remand was also granted. According to the learned counsel, all this was done in order to frustrate the right of the co-accused Naresh Jain to get bail under Section 167(2) Cr.P.C.. A complaint could have been filed only when the investigation was complete, but here it was filed violating the provisions of Section 44(1)(b) of the PMLA. The learned counsel urged that in the light of the decision of the Supreme Court in ***Satender Kumar Antil (supra)***, the Trial Courts were releasing the accused who had not been arrested during investigations on bail when they appeared before the court. It was submitted that the position being the same in the present case, the applicant having not been arrested during investigations, till the filing of the complaint and taking of cognizance by the court, he was entitled to bail.

7. Finally, it was submitted that the applicant was suffering from several health issues. He had lost an eye and after he had been sent to jail, his health had deteriorated and that he was fearing the loss of his other eye also. On that ground too, it was urged that the applicant be granted bail.

8. The learned counsel for the applicant also relied on various judgments, including ***Arnab Manoranjan Goswami v. State of***

***Maharashtra and Ors.***, (2021) 2 SCC 427, ***Siddharth v. The State Of Uttar Pradesh & Anr***. 2021 SCC OnLine SC 700, ***Aman Preet Singh v. C.B.I. Through Director*** 2021 SCC OnLine SC 941, ***Serious Fraud Investigation Office v. Rahul Modi & Ors.*** 2022 SCC OnLine SC 153, ***UOI v. K.A. Najeeb*** (2021) 3 SCC 713, ***Krishna Mohan Tripathi v. State Through Enforcement Directorate*** 2021 SCC OnLine SC 597, ***Angela Harish Sontakke v. State of Maharashtra*** (2021) 3 SCC 723, ***Sujay U Desai v. Serious Fraud Investigation Office*** [Order dt. 25th July, 2022 in Criminal Appeal No. 1023 of 2022], ***Ashwani Oberoi v. State Of Haryana*** [Order dt. 2nd March, 2021 in Special Appeal (Crl.) No(s). 8695/2021], ***Vipul Chitalia v. CBI and Anr***. [Order dt. 11th August, 2021 in BA No. 3810/2021, Bombay High Court], ***Bhupinder Singh @ Honey v. Enforcement of Directorate*** 2022 SCC OnLine P&H 1564, ***Arun Sharma v. Union Of India & Ors*** 2016 SCC OnLine P&H 5954, ***P.D. Agroprocessors Pvt Ltd & Ors v. Directorate Of Enforcement*** [Order dt. 27th July, 2016 in CRM-W. No. 204 of 2016, P&H High Court], ***Gautam Thapar v. Central Bureau of Investigation, Mumbai and Anr.*** [Order dt. 25th March, 2022 in Bail Application No. 51/2022], ***Dalip Singh Mann and Anr. v. ED*** [Order dt. 1st October, 2015 in CRM No.M-28490/2015 P&H High Court], Srikrushna Padhi v. ED [Order dt. 14th February, 2022 in BA No.65/2022, Orrisa High Court] and ***Sharadchandra Vinayak Dongre v. State of Maharashtra***, 1991 SCC OnLine Bom 81.

9. Mr. Zoheb Hossain, learned Special Counsel for the E.D., submitted that there was no ground made out for grant of bail as the application itself had been filed without any change in circumstances. It was submitted, relying on the judgment of the Supreme Court in ***Piara Singh v. State of***

***Punjab***, (1969) 1 SCC 379 that the pleas that had been raised in the present matter, particularly that since the applicant had not been arrested under Section 19 of the PMLA, the rigors of Section 45 of the PMLA would not apply, had been raised and had been rejected by a Coordinate Bench of this court vide order dated 14th September, 2021 (Annexure R-5 to the reply). Thus, on the basis of issue-estoppel, the applicant could not raise these grounds again. In the previous order, the Coordinate Bench had observed that since the applicant had absconded, NBWs were required to be issued and his arrest thereupon satisfied the requirements of Section 19 of the PMLA.

10. It was submitted by the Special Counsel that in the application for police remand (Annexure R-2), it had been brought to the notice of the court that the co-accused No.2 to 5 - the applicant being the accused No.2 - were absconding and though they had initially joined investigations and given statements, in the statements recorded in August 2020, they had provided fake addresses and could not be traced. Five notices had been issued as listed in the reply filed on behalf of the respondent to this application, which had all been duly served, but the applicant had not extended any co-operation in the investigation. Therefore, the benefit of judgment of the Supreme Court in ***Satender Kumar Antil (supra)*** was not available to him.

11. It was submitted that the pre-requisite for grant of bail, when a person had not been arrested during investigation, was full co-operation during investigations, which was absent in the present case. It was submitted by the learned Special Counsel that the internal file of the respondent records the satisfaction and the reason to believe that the

applicant was guilty *(the file was produced for perusal of this Court and has been returned back)*. Therefore, there was no way the applicant could seek to benefit from his own conduct.

12. The learned Special Counsel further submitted that the role of the applicant had been clearly spelt out in the complaint and has also been referred to in the Reply. The preliminary investigations had revealed money laundering of almost rupees ninety-six thousand crores. The investigations were pending and the filing of a complaint pending investigations was in accordance with law, i.e., the Explanation to Section 44(1) of the PMLA. That provision was found reasonable by the Supreme Court in ***Vijay Madanlal Chaudhary v. Union of India***, 2022 SCC OnLine SC 929. A sum of Rs.35 crores had been found in the accounts of the applicant and it was not as if he had no role to play; he was actively assisting his co-accused to launder money; the case had international ramifications as the money was being routed from Hong Kong, Singapore and Dubai, which was why investigations could not be declared concluded; Letter Rogatories had also been issued and response awaited and that was taking some time. Therefore, the filing of the second complaint or the pendency of this investigation would not entitle the applicant to bail.

13. I have heard the submissions of the learned counsel and have perused the cited judgments. The present application is not the first bail application filed on behalf of the accused/applicant, namely, Bimal Kumar Jain. The prior bail application had been dismissed by this court vide judgment dated 30th July, 2021. The learned Special Counsel had argued, relying on a judgment in ***Piara Singh (supra)*** that since in the previous bail application, this very applicant had raised a plea with regard to the

non-adherence to Section 19 of the PMLA and therefore, to the entitlement to the bail, the same plea could not be raised in the present application on the ground of "issue-estoppel". It needs to be noted however, that the said judgment, relied upon by the respondent, related to judgments on the conclusion of a trial and were pleas that were raised against the prosecution to the effect that the prosecution was estopped from relying on the testimony of an approver, since on the basis of the same statement, another person had been acquitted. The decision would not have a bearing on the facts of the present case, where a bail application is under consideration.

14. In ***Usmanbhai Dawoodbhai Memon and Ors. v. State of Gujarat***, (1988) 2 SCC 271, the position in law has been reiterated that the grant or refusal of a bail application is essentially an interlocutory order. Therefore, in the opinion of this Court, issue-estoppel is not available to the respondent to oppose the bail application. There is no finality attached to an order upon an application for bail and therefore renewed applications for grant of bail can be moved from time to time. The Supreme Court in ***Parvinder Singh v. State of Punjab***, (2003) 12 SCC 615 had also occasion to deal with a similar situation where a bail application had been rejected and a Special Leave Petition had also been dismissed, though as withdrawn. It was observed that the fact that an earlier bail application was rejected and the SLP dismissed (as withdrawn by the applicant) would not make the fresh application illegal and not maintainable.

15. However, there is a caveat, namely, that the fresh bail application requiring to be decided afresh on merits may require the court to consider fresh circumstances and subsequent events, or otherwise, it will amount to

a review of the previous decision. The Supreme Court in ***State of M.P. v. Kajad,*** (2001) 7 SCC 673 had reiterated the said position.

> *"**8.** …… It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169: 2001 SCC (Cri) 113] and various other judgments."*

16. In the present case, therefore, since this is a fresh bail application, the court would be required to consider whether there are fresh circumstances or subsequent events that call for a fresh application of mind or whether it is a mere repetition of previous grounds. Even without the application of the principle of issue-estoppel, the court in order to maintain consistency in the decision making, would be slow in entertaining such pleas, which are mere repetition of the earlier pleas, which had not found favour with it. In the present case, the previous order has dealt with the question of Section 19 of the PMLA, as raised before it, in the following words:-

> *"10. Qua objection of non-compliance under Section 19 of the PMLA, I may say since the arrest of accused Bimal Jain was in execution of the NBWs therefore, the provision under Section 19 of the PMLA could not be adhered to. Admittedly, Bimal Jain was arrested in execution of the NBW by the learned Special Judge, PMLA while taking cognizance of prosecution complaint filed by the Enforcement Directorate and thus there was no occasion to*

*comply with the requirement of Section 19 of the PMLA. The very fact the complaint was filed by the Enforcement Directorate arraying petitioner Bimal Jain as accused No.2, prima facie show there were reasons to believe the person was guilty of offence punishable under Section PMLA as the complaint is filed only against a person who is presumed to be guilty. Admittedly, the learned Special Judge, PMLA took cognizance of the complaint filed by the Enforcement Directorate as he reasonably believed petitioner Bimal Jain, being guilty of offence of money laundering."*

The argument raised was that the officer had not recorded the "belief that any person has been guilty of an offence punishable under this Act" and therefore, there was no arrest. However, the Directorate of Enforcement had produced the file before this Court for perusal where such a satisfaction had been in fact recorded. Therefore, that objection is not available. Since the question of adherence or non-adherence to the provisions of Section 19 of the PMLA have been raised and rejected by a Coordinate Bench, there is no cause to discuss that again here. The conclusions remain the same.

17. The further plea that because the applicant has not been arrested, the rigors of Section 14 of the PMLA are not attracted, is a plea that is not supported by the decision in ***Satender Kumar Antil (supra),*** though argued so. Rather, to the contrary, it records that if the applicant is in custody, the provisions of the special Act would get applied. In the present case, at the time the bail application was moved, even before the learned Trial Court, the applicant was in custody. The grievance was that the applicant had been wrongly sent into custody and that even issuance of NBWs was

wrong. Those issues cannot now be agitated before the court in a bail application.

18. In any case, even going by the judgment in ***Satender Kumar Antil (supra)***, when an accused is produced before the court, without arrest, it had powers to act under Section 88 Cr.P.C. to take a bond for appearance. That power has not been extinguished. In the present case, the NBWs were issued when it was found that the applicant had furnished fake addresses in his statements that have been recorded and the police was unable to trace him at the given addresses. Once the court was satisfied that the accused was not easily traceable and was absconding from law, NBWs were issued and the accused was arrested. There is no illegality attached to the arrest or production in custody before court, for bail to be granted by the court on those grounds. Moreover, after the applicant was produced before the court instead of asking the applicant to execute a bond, the learned Trial Court remanded him into judicial custody. There is no force in the contention that there was no arrest and therefore, the applicant was entitled to bail.

19. Another ground urged was that the Supreme Court had allowed the applicant to move for bail if the trial was not likely to conclude by the end of this year. It is no doubt true that the trial has not commenced, but it has also to be noted that the order of the learned Trial Court directing the framing of charge has been challenged by the applicant before this court and though proceedings have not been stayed, the parties were granted liberty to request the Trial Court to fix the date of hearing subsequent to the hearing of the matter by this court. In other words, it is not the fault of the prosecution that the trial has not commenced nor is it the fault of the learned Trial Court. As regards the application of the judgment of ***Vijay***

***Madanlal Choudhary (supra)*** factoring in delay for grant of bail, the question of delay was to be considered under Section 436A Cr.P.C.. The mere fact that there are a large number of witnesses to be examined would not *per se* entitle the applicant to bail.

20. Thus, this bail application would have to be considered in terms of the provisions of Section 45 of the PMLA and the twin requirements, namely, (i) that there are reasonable grounds for believing that he is not guilty of such offence and (ii) that he is not likely to commit any offence while on bail, will have to be met. The allegations against the applicant are very serious in nature. A huge amount of rupees ninety-six thousand crores is supposed to have been laundered. There has been multiple layering, calling for painstaking and detailed investigations. The applicant has fully participated in the money laundering by lending his companies accounts to his brother and making accommodating entries. A sum of Rs. 35 crores is directly traceable to the applicant. A mere exculpatory statement to the respondent can never suffice to form a ground, leave alone a reasonable ground to believe that the applicant is not guilty of the offence. The investigations are continuing in respect of the scale of operations, but to say that because those investigations are continuing, an incomplete challan had been submitted and therefore, the applicant would technically be entitled to bail under Section 167(2) Cr.P.C., would be a somewhat convoluted argument. The law by virtue of Explanation (ii) to Section 44(d) of the PMLA empowers the Directorate of Enforcement to investigate and file a charge-sheet and continue investigations, including against the named accused, such as the case against the present applicant. Therefore, the pendency of those investigations does not enure in favour of

the applicant. Rather, considering his previous conduct, in furnishing fake addresses and remaining out of bounds of the investigating agencies for almost two years, necessitating the issuance of NBWs, interference with investigations is a possibility that cannot be ignored. His remaining away from the reach of the law is also suggestive of his being a "flight risk".

21. Thus, considering the gravity of the offence, the previous reluctance of the applicant to co-operate with the investigating agencies, providing of fake addresses as well as absconding from law, are all factors indicative of the non-fulfillment of the twin conditions under Section 45 of the PMLA, to justify the grant of bail to the applicant.

22. The Bail Application is therefore rejected. There is no gainsaying that the observations made in this order are intended only for the purposes of disposal of the present Bail Application.

23. The order be uploaded on the website forthwith.

**(ASHA MENON)**
**JUDGE**

**SEPTEMBER 13, 2022**
**s**